

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of C.H., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROGER ALTMAN,

Respondent-Appellant,

and

GLEND A HUBBARD,

Respondent.

In the Matter of C.H., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GLEND A HUBBARD,

Respondent-Appellant,

and

ROGER ALTMAN,

Respondent.

Before: Talbot, P.J., and Sawyer and O'Connell, JJ.

UNPUBLISHED

April 24, 2003

No. 243186

Washtenaw Circuit Court

Family Division

LC No. 98-024772-NA

No. 243208

Washtenaw Circuit Court

Family Division

LC No. 98-024772-NA

MEMORANDUM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We reverse.

The parties do not dispute the trial court's findings that the statutory grounds for termination were established. Rather, these appeals allege error in determining the best interests of the minor child. Petitioner and both respondents argue that termination was against CH's best interests and request reversal. The guardian ad litem, the only party requesting termination in the trial court, did not file an appellate brief.

The trial court erred in failing to find that termination of respondents' parental rights was clearly not in the fifteen-year-old minor child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). It was established that reunification with respondents would never occur but that CH would remain in foster care or independent living until she reached the age of majority. The trial court listed finality as the only element in favor of CH's best interests that termination of parental rights would provide. However, testimony elicited from caseworkers and family members at the termination hearing unanimously indicated that CH would suffer emotional detriment if the finality of putting her out of her family occurred. Other testimony indicated that termination would not produce finality because CH was determined to continue to see her family regardless of the trial court's termination order. No evidence was presented showing that termination, or finality, would be beneficial to CH. We note, however, that the social history file was not included in the record on appeal.

Respondents also assign as error the trial court's refusal to appoint a separate attorney for CH in addition to the guardian ad litem because CH's and the guardian ad litem's goals were inconsistent. MCL 712A.17d(2). A review of the entire record shows that the guardian ad litem made CH's opposition to termination clear to the trial court on several occasions, while he pursued termination as being in her best interests. Although he made her position known, he did not advocate her position opposing termination. However, CH's position was vigorously advocated by the caseworkers, counsel for petitioner, and both of respondents' attorneys. MCL 712A.17d(2) makes appointment of counsel in addition to the guardian ad litem discretionary, and under the facts of this case the trial court did not err in finding that separate counsel was not necessary.

Respondent Roger Altman additionally argues that the trial court erred in failing to dismiss the supplemental petition for termination due to lack of evidence and lack of a petitioner. Respondent did not raise these objections in the trial court, and therefore the issues are not preserved for review. *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997). Counsel for petitioner did not call any witnesses, and requested that the trial court refrain from terminating respondents' parental rights. However, she requested that the trial court take judicial notice of the court file, and none of the parties requested withdrawal of the petition. Child protective proceedings are one continuous proceeding, and the trial court was expected to consider all oral and written reports and exhibits admitted at prior proceedings. *In re King*, 186 Mich App 458, 465; 465 NW2d 1 (1990). The court file presented sufficient evidence to support the trial court's consideration of the petition. Once an authorized party had filed the petition and the issue of best interests remained contested, the trial court possessed authority to make a

determination regarding termination of respondents' parental rights even though petitioner subsequently argued against termination. MCL 712A.19b(1); MCR 5.974(A)(2).

Reversed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Peter D. O'Connell